



**Muturi v Thiga (Environment and Land Appeal E10 of 2023)  
[2023] KEELC 22074 (KLR) (7 December 2023) (Judgment)**

Neutral citation: [2023] KEELC 22074 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAKURU  
ENVIRONMENT AND LAND APPEAL E10 OF 2023  
A OMBWAYO, J  
DECEMBER 7, 2023**

**BETWEEN**

**NATHANIEL MUTURI ..... APPELLANT**

**AND**

**PAUL NDEGWA THIGA ..... RESPONDENT**

*(Being an appeal from the ruling and orders of the Principal Magistrate,  
Nakuru dated 20th March 2023 Hon. P W Nyotah in MC ELC No.88B OF 2020)*

**JUDGMENT**

1. This is an appeal from the ruling of Honorable Prisca Wamucii Nyotah principal Magistrate dated 20<sup>th</sup> March 2023, in Nakuru MC ELC No 88B of 2020. The facts of the case are that the matter in the lower court came up for hearing on 20<sup>th</sup> March 2023 before Honorable P. Nyotah Senior Principal Magistrate and upon hearing an oral application for adjournment by Mr Wanjala counsel for the defendant (appellant) on grounds that they had not been appointed and that they had filed an application for stay of proceedings pending determination of a related Civil case between the parties, the court held that it had already made a decision that the proceedings in the Civil case are not pegged in proceedings in the criminal case. Moreover, that the application was moot and that the case would proceed to its logical conclusion. The defendant was ordered to pay the plaintiff's counsel cost of Kshs2500 and witness expenses of Ksh 3,000.
2. The defendant (appellant) was dissatisfied with this order and filed this appeal on the grounds that:-
  1. The Learned Trial magistrate erred in law and fact by failing appreciate the evidence tendered by the applicant on record.
  2. The Learned Trial magistrate erred in law by failing to consider the application on merit.
  3. The Learned Trial magistrate erred in law and in fact by failing to consider the fact of the cases.



4. The Learned Trial Magistrate erred in fact and in law by failing to appreciate the evidence tendered with regard to the fact that the appellant is a complainant and the Respondent is an accused person in Criminal case number 2544 of 2022 in the Chief Magistrates Court at Nakuru.
  5. The Learned Trial Magistrate erred in law and in fact by arriving at a decision contrary to the weight of the evidence on record.
  6. The Learned Trial Magistrate erred in law and in fact by totally ignoring the plausible fact that if both matters were allowed to proceed, the courts right contradict themselves
  7. The Learned Trial Magistrate erred in law and in fact by failing to consider the massive loss that the appellant would suffer.
  8. The Learned Trial Magistrate erred in fact and in law by failing to appreciate the evidence tendered with regard to ownership of the properties
  9. The Learned Trial Magistrate erred in law and ill fact by failing to consider the existence of a criminal case with the same facts as the civil case.
3. The appellant prays for orders that this appeal be allowed and the ruling of the Trial Subordinate Court be set aside with costs. That pending the hearing and determination of the Appeal herein, the Civil suit be stayed pending the hearing and determination of Criminal case number 2544 of 2022 in the Chief Magistrates Court at Nakuru. The costs of this Appeal be borne by the Respondents.
  4. I have considered the submissions by the appellant and do find that the main issue for determination is whether the learned magistrate exercised her discretion properly because the grant of an adjournment is the discretion of the court. Moreover, whether to stay or not to stay the proceedings of a civil case pending the determination of a criminal case is the discretion of the judicial officer.
  5. In Kenya, the aspect of concurrent civil and criminal proceedings is provided for in Section 193A of the Criminal Procedure Code but not the *Civil Procedure Act*. The provision states:-
 

Concurrent criminal and civil proceedings:

Notwithstanding the provisions of any other written law, the fact that any matter in issue in any criminal proceedings is also directly or substantially in issue in any pending civil proceedings shall not be a ground for any stay, prohibition or delay of the criminal proceedings.
  6. In an Article titled '*Unjust Justice in Parallel Proceedings: Preventing Circumvention of Criminal Discovery Rules*, the author, Randy S. Eckers, defines concurrent proceedings as independent, simultaneous investigations and prosecutions involving substantially the same matter and parties. More often than not, the currency of the twin proceedings is challenged before Courts. In the above article, the author reiterates that a determination to either stay or allow the continuation of parallel proceedings depend on existence of certain requirements. He observes: -
 

“The Courts only block parallel proceedings in special circumstances. A defendant may move for a stay to block parallel proceedings, which will be granted only if the defendant can prove either that the government is acting in bad faith and using malicious tactics to circumvent the strict criminal discovery rules, or that there is a due process violation....

Even if a defendant meets one of these requirements, a stay is not guaranteed. The Court takes many other factors into account in deciding whether a stay is appropriate in a specific



situation. These factors include the commonality of the transaction or issues, the timing of the motion, judicial efficiency, the public interest, and whether or not the movant is intentionally creating an impediment."

7. In absence of special circumstances, both cases will probably proceed.
8. While discussing the general principles applicable in such scenarios, the Supreme Court of Appeal of South Africa in *Law Society of the Cape of Good Hope v MW Randell* (341/2012) [2013] ZASCA 36 (28 March 2013) stated as follows: -

...it applies where there are both criminal and civil proceedings pending which are based on the same facts. The usual practice is to stay the civil proceedings until the criminal proceedings have been adjudicated upon, if the accused person can show that he or she might be prejudiced in the criminal proceedings should the civil proceedings be heard first....
9. The Learned Judges of the Supreme Court of Appeal further stated that it was not automatic for an Applicant to be awarded stay of the civil proceedings. It found support in numerous English decisions among them, *Jefferson Ltd v Bhetcha* [1979] 2 All ER 1108 (CA) and *R v BBC, x p Lavelle* [1983] 1 All ER 241 (QBD) and observed that there was no established principle of law that if criminal proceedings were pending against a defendant in respect of the same subject matter, he or she should be excused from taking any further steps in the civil proceedings which might have the result of disclosing what his defence or is likely to be, in the criminal proceedings.
10. For this court to overturn the decision of the learned magistrate, the appellant should demonstrate that the magistrate exercised her discretion improperly in the circumstances. The appellant did not give any special circumstances to warrant the learned magistrate to grant a stay of proceedings of the civil case or to review her decision.
11. In this case, I do find that the learned Magistrate had already decided on 6<sup>th</sup> March 2023 that the proceedings of the civil case would not be pegged on the criminal case and therefore the application dated 16<sup>th</sup> March 2023 and filed on 17<sup>th</sup> March 2023 was moot. I do find that the learned magistrate did not err in making an order that the criminal proceedings are no pegged on the civil proceedings. The appeal is dismissed with costs.

**JUDGMENT DATED SIGNED, AND DELIVERED VIRTUALLY AT NAKURU THIS 7<sup>TH</sup> DAY OF DECEMBER 2023.**

**A. O. OMBWAYO**

**JUDGE**

